



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

May 8, 2014

Colonel Alan M. Dodd
District Engineer
Department of the Army
Jacksonville District Corps of Engineers
Attn: Mark Peterson
1520 Royal Palm Square Blvd, Suite 310
Fort Myers, Florida 33919

Subject: Land Trust 97-12; 2014-00413(SP-MEP)

Dear Colonel Dodd:

This letter is in response to permit application number 2014-00413(SP-MEP) submitted by Land Trust 97-12. The applicant proposes to impact 1.05 acres of mangrove wetlands for the purpose of creating four single-family lots. The total site is 2.47 acres in size and contains 1.5 acres of mangroves and 0.97 acres of uplands. The project is located 0.50 miles north of Manatee Avenue West, on the eastern shore of Anna Maria Sound, in Section 27, Township 34 South, Range 16 East, Manatee County, Florida.

The U.S. Environmental Protection Agency, Region 4 has completed its review of this project from information contained in the public notice (PN). This letter summarizes the EPA's position on the project based on the Clean Water Act (CWA) Section 404(b)(1) Guidelines, which prohibit avoidable or significant adverse impacts to the aquatic environment.

The proposed project will have a direct impact on 1.05 acres of tidal mangrove wetlands. Mangrove wetlands located within western Florida form a vital component of the estuarine and marine environment, providing a major organic detrital base to the aquatic food chains, significant habitat for arboreal, intertidal and subtidal organisms, nesting sites, cover and foraging grounds for birds, and habitat for reptiles and mammals. Mangroves provide protected nursery area for fishes, crustaceans, and shellfish. They are one of the most biologically productive ecosystems in the world. Mangroves also serve as storm buffers by functioning as wind breaks and through prop root baffling of wave action. Mangrove roots stabilize shorelines and fine substrates, reducing turbidity, and enhancing water clarity. Mangroves improve water quality and clarity by filtering upland runoff and trapping waterborne sediments and debris. However, the cumulative loss of this habitat has reduced overall water quality and fisheries production within the western Florida ecosystem. For these reasons, the EPA considers these mangrove wetlands to be aquatic resources of national importance (ARNI).

In order to fully review the proposed project, the EPA requests that the applicant provide information on alternative site locations that have been reviewed which would have less adverse impacts on the aquatic environment. The CWA Section 404(b)(1) Guidelines, 40 CFR § 230.10(a) states that no discharge of dredge and/or fill material (into waters of the United States, including wetlands) shall be permitted if

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there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment, provided the alternative does not have other significant adverse environmental consequences. This regulation further states that for non-water dependent projects, practicable alternatives that do not involve special aquatic sites are presumed to be available. Practicable alternatives are those that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes." Therefore, the EPA requests that the U.S. Army Corps of Engineers (Corps) have the applicant provide this office with the following information for each site examined:

- Presence, quantity and quality of wetlands
- County and/or city zoning
- Availability for purchase, and a determination of whether the proposed cost is reasonable
- The presence or absence of any federally listed plant or animal species and/or historical properties
- The presence or absence of high value uplands
- Transportation access

According to the PN, the applicant proposes to construct a retaining wall at the waterward edge of the fill pad in order to minimize impacts to the aquatic environment. The EPA requests that the applicant provide additional measures that can be taken to avoid and minimize onsite tidal wetland impacts. According to the CWA Section 404(b)(1) Guidelines and February 6, 1990, Memorandum of Agreement between the Corps and the EPA in determining mitigation, an applicant must demonstrate avoidance and minimization of wetland impacts before compensatory mitigation can be considered. Specifically, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. Practicable alternatives include activities which do not involve the discharge of dredged or fill material into waters of the United States.

The PN states the applicant proposes to purchase credits at a Tampa Bay Mitigation Bank. Note that the EPA preference for mitigation is the use of a federally approved mitigation bank or in-lieu fee program, if available, rather than permittee-responsible mitigation. Since avoidance and minimization have not been adequately demonstrated, it is premature for the EPA to consider any type of mitigation plan. In the event that onsite wetland impacts are reduced and avoidance and minimization are demonstrated in the future, the EPA requests that the applicant provide the following information regarding any proposed mitigation. This information is necessary in order to insure the proposed mitigation for impacts associated with the project are in compliance with the Federal Compensatory Mitigation Rule, dated April 2008.

- Detailed mitigation and maintenance plan
- The responsible party for the long-term management of the mitigation area
- Assurance for the long-term protection of the mitigation area (such as a perpetual conservation easement)
- Detailed performance standards to achieve mitigation success
- Detailed monitoring requirements
- Detailed long-term management plan
- Detailed adaptive management plan
- Documented financial assurance to insure the mitigation site is maintained in perpetuity

- Detailed description of the net benefit the proposed mitigation will provide to the environment

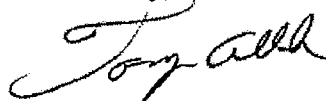
The EPA requests that the applicant provide Uniform Mitigation Assessment Method scores for the proposed impact and mitigation sites. Technical rationale for each score should also be included.

The EPA requests that the applicant provide a cumulative impact analysis for other potential projects which are similarly situated as that proposed. It is essential that we have a clear understanding on the potential direct, secondary, and cumulative environmental impacts these projects will have on our aquatic resources. This should include all tidally influenced land and open water parcels privately owned within Palma Sola Bay and Anna Maria Sound.

In conclusion, the EPA believes that the permit for the project should not be approved as proposed, because it does not comply with the CWA Section 404(b)(1) Guidelines. We believe that the proposed project may have substantial and unacceptable adverse impacts to mangroves, which we consider to be ARNI.

Thank you for providing an opportunity for the EPA to comment on this authorization. At this time, the EPA requests additional information to facilitate our evaluation of this project. We look forward to receiving more information from you. If you have any questions, please contact Ron Miedema at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 or by telephone at 561-616-8741.

Sincerely,



Tony Able
Chief
Wetlands Regulatory Section

cc: Ms. Victoria Foster, FWS, Vero Beach, FL

Mr. Al Gagne, SWFWMD, Brooksville, FL

Mr. Mark Sramek, NMFS, St. Petersburg, FL

